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May 10, 2018

**BY CM/ECF & HAND DELIVERY**

The Honorable Richard G. Andrews  
 U.S. District Court for the District of Delaware  
 U.S. Courthouse  
 844 North King Street  
 Wilmington, DE 19801

Re: *Acceleration Bay LLC v. Take-Two. et al.*  
D. Del., C.A. No. 16-455-RGA

Dear Judge Andrews:

Acceleration Bay respectfully requests that the Court modify the case schedule in the *Take Two* action to defer expert discovery and summary judgment and *Daubert* motion practice until after the conclusion of trial in the related case of *Acceleration Bay LLC v. Electronic Arts, Inc.* (D. Del.) (Civ. A. No. 16-454-RGA) ("*Electronic Arts*"), which Acceleration Bay expects will occur in early-2019.

Specifically, assuming the *Electronic Arts* trial is set for January 14, 2019, and trial in the *Take Two* case is set for April 15, 2019, which Acceleration Bay proposes, the following modifications to the current *Take Two* schedule would provide sufficient time for the parties to handle the remaining discovery and pretrial items prior to trial:

Deadline	Current	Proposed
Reply Expert Reports	6/1/18	January 25, 2019
Close of Expert Depositions	6/15/18	February 18, 2019
Opening Summary Judgment/Daubert Briefs	6/29/18	February 22, 2019
Opposition Summary Judgment/Daubert Briefs	7/20/18	March 8, 2019
Reply Summary Judgment/Daubert Briefs	8/3/18	March 15, 2019

The Honorable Richard G. Andrews  
May 10, 2018  
Page 2

The current schedule was premised on the dates for the trials in the *Electronic Arts* and *Take Two* cases that have now been postponed. Modifying the schedule will conserve the resources of the Court and the parties by avoiding the need for one or more rounds of supplemental expert reports to address the results of the *Activision* and *Electronic Arts* summary judgment and *Daubert* motions and trials.

For example, adjudication in the *Activision* case of the pending summary judgment and *Daubert* motions—which cover a wide range of issues including validity, infringement and damages and for which the Court will hold a hearing on May 17, 2018—and the trials in *Activision* and *Electronic Arts* will likely resolve many issues that will impact the *Take Two* case. *Activision*, D.I. 537. In particular, various arguments that would otherwise be raised in the parties’ summary judgment and *Daubert* motions may be rendered moot by the Court’s rulings. Also, the parties may need to supplement their expert reports in the *Take Two* case. It would be far more efficient for the parties to submit their expert reports after the conclusion of those trials and then proceed to a single round of expert depositions rather than serve expert reports, have depositions, supplement in view of developments in the *Activision* case, possibly have a second round of expert depositions, supplement yet again in view of developments in the *EA* case, and have a possible third round of expert depositions.

The circumstances of Acceleration Bay’s requested modification of the *Take Two* schedule is unlike any previous request because there is now a hearing set in the *Activision* case on pending summary judgment and *Daubert* motions, the parties completed such briefing in the *Electronic Arts* case, and it is likely that the parties will benefit from definitive rulings from the Court that will avoid potentially duplicative motion practice and multiple rounds of expert reports and depositions. Moreover, now that the *Activision* and *Electronic Arts* trials have been postponed, there is almost a year before the expected *Take Two* trial date, unlike the previous trial schedule where the timeline between trials was more compressed and fast-approaching.

*Take Two* indicated a willingness to postpone the *Take Two* deadlines to later in 2018, but does not agree to move them to after the conclusion of the *Electronic Arts* trial, even though this would be the most efficient way to proceed and the best use of the Court’s judicial resources.

Thus, in the interest of judicial economy, Acceleration Bay respectfully requests that the Court modify the case schedule in the *Take Two* action to defer expert discovery, including the conclusion of expert reports and expert depositions, and summary judgment and *Daubert* motion practice until after the conclusion of the *Electronic Arts* trial.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

cc: All Counsel of Record (Via ECF Filing, Electronic Mail)  
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